

BEFORE THE
GOVERNING BOARD OF THE
SNOWLINE JOINT UNIFIED SCHOOL DISTRICT

In the Matter of the Reduction in Force
Proceeding Involving:

OAH No. 2011030270

Benene Craig, Stacy Wallace, Sherrie
Shaffer, Cemonn Kessee, Dawn Edgerly,
Gabriel Guzman, Sheryl Teal, Karley Turner,
Krystal Diniz, Melissa Lee, Danielle
Beaujean, Ralph Wiley, Justin Johnson,
Keith Johnston,

Respondents.

PROPOSED DECISION

James Ahler, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter in Phelan, California, on April 13, 2011.

Warren S. Kinsler, Attorney at Laws, represented the Snowline Joint Unified School District.

Carlos Perez, Attorney at Law, represented all but the following respondents, Cemonn Kessee, Sherrie Shaffer, and Stacy Wallace, each of whom appeared at the reduction in force hearing.

The matter was submitted on April 13, 2011.

FACTUAL FINDINGS

The Snowline Joint Unified School District

1. The Snowline Joint Unified School District is located in San Bernardino County's High Desert, west of Interstate 15. It encompasses about 625 square miles and serves approximately 8,000 Kindergarten through 12th grade students residing in Phelan, Wrightwood, Pinon Hills, Baldy Mesa, Oak Hills, Oak Springs Valley, West Cajon Valley, and parts of Victorville. The District maintains six elementary schools, two middle schools, one comprehensive high school, an independent studies program and a continuation high school. The District employs about 700 persons, nearly 400 of whom provide certificated

services. About 85 percent of the District's annual budget pays employee salaries and benefits.

2. The District is governed by an elected five member Board of Education (the Governing Board). Eric K. Johnston, Ed.D., is SJUSD's Superintendent of Schools and Chief Executive Officer. He is assisted by Luke Ontiveros, Assistant Superintendent of Human Resources/Administrative Services.

The Fiscal Crisis – Economic Layoffs

3. Since Proposition 13 was implemented in 1978, public schools have obtained financing primarily from the State of California. A school district cannot determine the level of state funding it will receive until the state budget is chaptered, an event that is supposed to occur each year in late June. Before then, a school district's governing board must take steps to make certain that ends meet if the worst-case financial scenario develops.

California's continuing budget problems have had a crippling impact on SJUSD and other public school districts. With regard to its budget for the 2011-12 school year, SJUSD has projected a shortfall of approximately \$5 million. Declining student enrollment was not a factor in SJUSD reaching the very difficult decision that it was necessary to reduce staffing to balance its budget.

The District's Response

4. In response to the anticipated budgetary shortfall, Assistant Superintendent Ontiveros visited each school site to review staffing. Staffing ratios were reviewed. He reported his findings to Superintendent Johnston, who recommended that SJUSD's Governing Board approve a resolution reducing or eliminating 13.37 full time equivalent (FTE) positions.

5. On March 8, 2011, the Governing Board adopted Resolution No. 11-970. That resolution observed that it had become necessary to reduce or discontinue particular kinds of services, that declining enrollment was not the basis for the reduction or discontinuation of services, and that the following services should be reduced:

<u>Particular Kind of Service</u>	<u>Full-Time Equivalent</u>	
Special Projects Coordinator	1.0	FTE
RTI Coach	2.0	FTE
K through 5 th Grade Classroom Instruction	5.0	FTE
Middle School PE Instruction	0.37	FTE
Middle School Core Instruction	2.0	FTE
Middle School Drafting Instruction	0.8	FTE
Middle School Video Production Instruction	0.2	FTE
Middle School Language Arts Instruction	1.0	FTE

Continuation High School History/Social
Science/Physical Education Instruction

1.0 FTE

Total:

13.37 FTE

In reaching the decision to adopt Resolution No. 11-970, the Governing Board considered all assured attrition, including deaths, resignation, retirements, non-reelects, and other permanent vacancies.

In reaching the decision to adopt Resolution No. 11-970, the Governing Board stated that in order for an employee serving in a position identified for reduction or discontinuance to be eligible for reassignment to a position held by an employee with less seniority, the senior employee must be both credentialed and competent to render the entire service currently being performed by the junior employee. Competency was defined as (a) currently possessing a clear or preliminary credential (including supplementary authorization) or the equivalent standard, life or general credential in the subject or grade level to which the employee would be reassigned at the beginning of the 2011-2012 school year and (b) possession of Highly Qualified status under the No Child Left Behind Act in the relevant subject matter identified in the reassignment.

The resolution did not contain criteria under Education Code section 44944, subdivision (d)(1), authorizing the retention of a junior employee over a more senior employee on the basis of the junior employee's possession of special training or experience necessary to teach a particular course of study.

The Particular Kinds of Services

6. The services identified in the Governing Board's resolution to reduce or discontinue particular kinds of services were the kinds of educational services that could properly be reduced or discontinued. The reduction or discontinuation of those services was neither arbitrary nor capricious. The Governing Board's resolution related to the reduction of particular kinds of services constituted an appropriate matter within the exercise of the Governing Board's discretion. No particular kinds of services were proposed to be lowered to levels less than those levels mandated by state or federal law. The recommendation that certain particular kinds of services be reduced or discontinued, and the resolution based upon that recommendation, was related solely to the economic crisis and HUSD's need to balance its budget.

SJUSD's Seniority List

7. SJUSD maintains a seniority list, a constantly evolving document that is updated as new certificated employees are hired and as other employees retire, resign, or are otherwise separated from service with the District. The SJUSD seniority list is a spreadsheet that is organized from the most senior employee to the most recently hired employee. The spreadsheet contains a seniority number, each employee's name, each employee's current

credentials, relevant notes, the administrative staff's determination of tie-breakers for those employees having the same date of probationary service with the district, the location where the employee provides services, the employee's status (permanent or probationary), and the extent to which the employee provides full-time services.

8. In February 2011, when it became apparent that a reduction in force might be required, SJUSD circulated a preliminary seniority list to all certificated employees with the request that each employee review the seniority list and verify or update his or her seniority information; if an employee did not return the list with corrections, the administrative staff concluded that the information that was set forth in the seniority list was correct for the employee who did not respond. Administrative staff continued to accept new credentials and continued to update the seniority list through March 15, 2011, the date that preliminary layoff notices had to be served, and it will continue to do so in the future.

The Issuance of Layoff Notices

9. Using the updated seniority spreadsheet, SJUSD staff began the process of identifying those certificated employees who should receive preliminary layoff notices as a result of the Governing Board's resolution and those employees who should not receive such notices. Whenever an employee was tentatively identified as being eligible to receive a preliminary layoff notice, that employee's seniority and credentials were carefully examined to determine if that employee was eligible to "bump" into a position that was held by a more junior employee.

Before issuing preliminary layoff notices, SJUSD's administrative staff determined that there was no positively assured attrition. However, SJUSD is offering retirement packages to current employees, and if an employee accepts the retirement offer and will not be employed by the District in the 2011-2012 school year, the position vacated by that employee will be filled by the most senior employee who received a layoff notice who is qualified and competent to fill that vacancy.

10. SJUSD correctly identified those individuals whose employment was impacted by the Governing Board's resolution. SJUSD timely served on each of those employees a written notice advising that the Superintendent had recommended that their services would not be required for the upcoming school year. The formal notice and the accompanying documents set forth the reasons for the recommendation. The permanent and probationary employees who were served with the preliminary layoff notices were advised of the right to a hearing, and each of them was warned that the failure to submit a written request for a hearing by March 28, 2011, would constitute a waiver of that employee's right to a hearing. All prehearing jurisdictional requirements were met.

The recommendation that Respondents be terminated from employment was not related to their fitness or abilities as teachers.

The Administrative Hearing

11. On April 13, 2011, the record in the layoff proceeding was opened. Jurisdictional documents were introduced. An opening statement was presented on SJUSD's behalf. Opening statements were not provided on behalf of any respondent and were waived. Sworn testimony was taken; documentary evidence was received; several stipulations were reached; closing argument was given; the record was closed; and the matter was submitted.

The Reduction in Force Proceeding

12. Assistant Superintendent Ontiveros established that SJUSD's proposed reduction in force was the result of a budgetary crisis and was initiated in good faith. SJUSD complied with all jurisdictional requirements required by statute. Initiating and continuing with the reduction in force proceeding was in the best interest of the District and its students. SJUSD used seniority and competence as the basis for "bumping" senior employees and the retention of the services of the senior, appropriately credentialed employees over more junior employees. The tie-breaking criteria were applied to determine seniority between employees providing the same kinds of services who were hired on the same day, and the application of those criteria, was in the best interest of the District and its students.

13. Cemonn Kessee testified about her situation. Ms. Kessee (seniority number 358) holds a clear multiple subject teaching credential and an English Language authorization. Her first paid date of probationary service, which serves as her seniority date, is October 1, 2006.

Ms. Kessee has completed at least six courses necessary to obtain a Special Education credential. While she may be eligible to apply for a Special Education credential after she completes one more course, she had not completed that course, nor has she made the required application to receive such an internship credential.

Ms. Kessee observed that she is more senior than Elza Valenzuela (seniority date 386), whose first date of paid probationary service with SJUSD was on August 9, 2007. Ms. Valenzuela holds a District-Approved Special Education (Moderate/Severe) Intern Credential and, with this credential, provides special education services at an SJUSD elementary school.

Ms. Kessee wanted the opportunity to let the District know that she intends to obtain a Special Education credential and that she wants to return to employment as a Special Education teacher if she is not reinstated to her position as an elementary school teacher. Mr. Ontiveros acknowledged Ms. Kessee's situation and interest in returning to employment with the District as an elementary school teacher or as a Special Education teacher as soon as possible.

LEGAL CONCLUSIONS

Statutory Authority for Reduction in Force Proceedings

1. Education Code section 44940 provides in part:

(a) No later than March 15 and before an employee is given notice by the governing board that his or her services will not be required for the ensuing year for the reasons specified in Section 44955, the governing board and the employee shall be given written notice by the superintendent of the district or his or her designee . . . that it has been recommended that the notice be given to the employee, and stating the reasons therefor.

. . .

(b) The employee may request a hearing to determine if there is cause for not reemploying him or her for the ensuing year. A request for a hearing shall be in writing and shall be delivered to the person who sent the notice pursuant to subdivision (a), on or before a date specified in that subdivision, which shall not be less than seven days after the date on which the notice is served upon the employee. If an employee fails to request a hearing on or before the date specified, his or her failure to do so shall constitute his or her waiver of his or her right to a hearing . . .

(c) In the event a hearing is requested by the employee, the proceeding shall be conducted and a decision made in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the governing board shall have all the power granted to an agency therein, except that all of the following shall apply:

(1) The respondent shall file his or her notice of defense, if any, within five days after service upon him or her of the accusation and he or she shall be notified of this five-day period for filing in the accusation.

(2) The discovery authorized by Section 11507.6 of the Government Code shall be available only if request is made therefor within 15 days after service of

the accusation, and the notice required by Section 11505 of the Government Code shall so indicate.

(3) The hearing shall be conducted by an administrative law judge who shall prepare a proposed decision, containing findings of fact and a determination as to whether the charges sustained by the evidence are related to the welfare of the schools and the pupils thereof. The proposed decision shall be prepared for the governing board and shall contain a determination as to the sufficiency of the cause and a recommendation as to disposition. However, the governing board shall make the final determination as to the sufficiency of the cause and disposition. None of the findings, recommendations, or determinations contained in the proposed decision prepared by the administrative law judge shall be binding on the governing board. Nonsubstantive procedural errors committed by the school district or governing board of the school district shall not constitute cause for dismissing the charges unless the errors are prejudicial errors. Copies of the proposed decision shall be submitted to the governing board and to the employee on or before May 7 of the year in which the proceeding is commenced. All expenses of the hearing, including the cost of the administrative law judge, shall be paid by the governing board from the district funds . . .

(d) Any notice or request shall be deemed sufficient when it is delivered in person to the employee to whom it is directed, or when it is deposited in the United States registered mail, postage prepaid and addressed to the last known address of the employee. . . .

(e) If after request for hearing pursuant to subdivision (b) any continuance is granted pursuant to Section 11524 of the Government Code, the dates prescribed in subdivision (c) which occur on or after the date of granting the continuance and the date prescribed in subdivision (c) of Section 44955 which occurs after the date of granting the continuance shall be extended for a period of time equal to the continuance.

2. Education Code section 44955 provides in part:

(a) No permanent employee shall be deprived of his or her position for causes other than those specified . . . and no probationary employee shall be deprived of his or her position for cause other than as specified . . .

(b) Whenever . . . a particular kind of service is to be reduced or discontinued not later than the beginning of the following school year . . . and when in the opinion of the governing board of the district it shall have become necessary by reason of any of these conditions to decrease the number of permanent employees in the district, the governing board may terminate the services of not more than a corresponding percentage of the certificated employees of the district, permanent as well as probationary, at the close of the school year. Except as otherwise provided by statute, the services of no permanent employee may be terminated under the provisions of this section while any probationary employee, or any other employee with less seniority, is retained to render a service which said permanent employee is certificated and competent to render . . .

As between employees who first rendered paid service to the district on the same date, the governing board shall determine the order of termination solely on the basis of needs of the district and the students thereof. Upon the request of any employee whose order of termination is so determined, the governing board shall furnish in writing no later than five days prior to the commencement of the hearing held in accordance with Section 44949, a statement of the specific criteria used in determining the order of termination and the application of the criteria in ranking each employee relative to the other employees in the group. This requirement that the governing board provide, on request, a written statement of reasons for determining the order of termination shall not be interpreted to give affected employees any legal right or interest that would not exist without such a requirement.

(c) Notice of such termination of services shall be given before the 15th of May in the manner prescribed in Section 44949, and services of such employees shall be

terminated in the inverse of the order in which they were employed, as determined by the board in accordance with the provisions of Sections 44844 and 44845. In the event that a permanent or probationary employee is not given the notices and a right to a hearing as provided for in Section 44949, he or she shall be deemed reemployed for the ensuing school year.

The governing board shall make assignments and reassignments in such a manner that employees shall be retained to render any service which their seniority and qualifications entitle them to render. However, prior to assigning or reassigning any certificated employee to teach a subject which he or she has not previously taught, and for which he or she does not have a teaching credential or which is not within the employee's major area of postsecondary study or the equivalent thereof, the governing board shall require the employee to pass a subject matter competency test in the appropriate subject.

(d) Notwithstanding subdivision (b), a school district may deviate from terminating a certificated employee in order of seniority for either of the following reasons:

(1) The district demonstrates a specific need for personnel to teach a specific course or course of study, or to provide services authorized by a services credential with a specialization in either pupil personnel services or health for a school nurse, and that the certificated employee has special training and experience necessary to teach that course or course of study or to provide those services, which others with more seniority do not possess.

(2) For purposes of maintaining or achieving compliance with constitutional requirements related to equal protection of the laws.

Jurisdiction

3. Jurisdiction in this matter exists under Education Code sections 44949 and 44955. All notices and jurisdictional requirements contained in those sections were satisfied as to all respondent employees.

The Reduction of Particular Kinds of Services

4. A school board may determine whether a particular kind of service is to be reduced or discontinued, and it cannot be concluded that the governing board acted unfairly or improperly simply because it made a decision it was empowered to make. (*Rutherford v. Board of Trustees* (1976) 64 Cal.App.3d 167, 174.) A school board's decision to reduce or discontinue a particular kind of service need not be tied in with any statistical computation. It is within the discretion of a school board to determine the amount by which it will reduce or discontinue a particular kind of service as long as the school district does not reduce a service below the level required by law. (*San Jose Teachers Assn. v. Allen* (1983) 144 Cal.App.3d 627, 635-636.)

Competence

5. The Education Code leaves to a school board's discretion the determination of whether in addition to possessing seniority an employee must also be competent to be employed in a vacant position. The term "competent" relates to an individual's specific skills or qualifications including academic background, training, credentials, and experience, but it does not include evidence related to on-the-job performance. (*Forker v. Board of Trustees* (1984) 160 Cal.App.3d 13, 18-19.) An employee holding a special credential or needed skill, if such credentials or competence are not shared by a more senior employee, may be retained even though it results in termination of a senior employee. (*Moreland Teachers Assn. v. Kurze* (1980) 109 Cal.App.3d 648, 655.)

Information Filed with the District after March 15, 2010

6. A school district must issue and serve preliminary layoff notices no later than March 15. Before then, a district must consider all information on file that assists the district in making assignments and reassignments based on seniority and qualifications. After March 15, the district has no authority to issue a layoff notice to an employee who has become junior by reason of another employee's filing of proof of additional qualifications. Thus, a credential filed with a district after March 15 cannot be the basis for bumping. (*Degener v. Governing Board* (1977) 67 Cal.App.3d 689, 698.)

Cause Exists to Give Notice to Certain Employees

10. As a result of the Governing Board's lawful reduction of particular kinds of service, cause exists under the Education Code for the District to give final notice to those respondents identified hereafter that their employment will be terminated at the close of the current school year and that their services will not be needed by the district for the 2011-2012 school year.

Determination

11. The charges set forth in the Accusation were sustained by the preponderance of the evidence and were related to the welfare of the Snowline Joint Unified School District and its pupils. The District's administrative staff made necessary assignments and reassignments in such a manner that the most senior employees were retained to render services which their seniority and qualifications entitled them to render.

RECOMMENDATION

It is recommended that the Governing Board of the Snowline Joint Unified School District issue final notices to the following certificated employees: Benene Craig, Stacy Wallace, Sherrie Shaffer, Cemonn Kessee, Dawn Edgerly, Gabriel Guzman, Sheryl Teal, Karley Turner, Krystal Diniz, Melissa Lee, Danielle Beaujean, Ralph Wiley, Justin Johnson, Keith Johnston,

Dated:

JAMES AHLER
Administrative Law Judge
Office of Administrative Hearings